

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TRACY CARMICHAEL,

Defendant-Appellant.

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UNPUBLISHED

March 10, 2011

No. 296095

Wayne Circuit Court

LC No. 09-022639-FH

Before: SAWYER, P.J., and MARKEY and FORT HOOD, JJ.

PER CURIAM.

Defendant was convicted, following a jury trial, of embezzlement, MCL 750.147(7), four counts of forgery, MCL 750.248, four counts of uttering and publishing, MCL 750.249, false pretenses, MCL 750.218(5), and second-degree money laundering, MCL 750.411n. He was sentenced as a habitual offender second offense, MCL 769.10, to 11 to 30 years' imprisonment for the embezzlement conviction, 11 to 21 years' imprisonment for the forgery and uttering and publishing convictions, and 10 to 15 years' imprisonment for the false pretenses and second-degree money laundering convictions. Defendant appeals as of right, and we affirm.

The prosecutor's theory of the case was that defendant represented to third parties that he engaged in business investments of financially distressed properties, but in actuality he made misrepresentations and fraudulently executed documents to obtain money from mortgages on properties that he did not legally own. Defendant denied any wrongdoing and alleged that he merely acted as a consultant to individuals with financial problems. Despite defendant's testimony on his own behalf, the jury convicted defendant as charged, and he appeals as of right.

Defendant first alleges that his convictions must be reversed because the trial court did not comply with the constitutional and court rule requirements for waiver of his Sixth Amendment right to counsel. We disagree. The defense did not object to the procedure utilized in the trial court to determine that the waiver of the right to counsel was knowingly, intelligently, and voluntarily given. Therefore, this issue is reviewed for plain error affecting substantial rights. *People v Carines*, 460 Mich 750, 764; 597 NW2d 130 (1999). Reversal is only warranted when the plain, forfeited error resulted in the conviction of an actually innocent defendant or where the error seriously affected the fairness, integrity, or public reputation of the judicial proceedings. *Id.* at 766-767.

When addressing the waiver of the Sixth Amendment right to counsel, the inquiry is whether the defendant gave a knowing, intelligent, and voluntary waiver. *People v Williams*, 470 Mich 634, 642-643; 683 NW2d 597 (2004). The trial court's factual findings addressing a defendant's waiver are reviewed for clear error. *People v Russell*, 471 Mich 182, 187; 684 NW2d 745 (2004). When the ruling involves interpretation of the law or application of the law to uncontested facts, appellate review is de novo. *Id.* The reviewing court may not substitute its judgment for that of the trial court, but must respect the trial court's factual findings and issues involving credibility. *Williams*, 470 Mich at 641.

Before granting a defendant's request for waiver of the right to counsel, the trial court must find that: (1) the request is unequivocal; (2) the waiver is given knowingly, intelligently, and voluntarily; and (3) the defendant will not disrupt, unduly inconvenience, or burden the court and its administration of court business. *Williams*, 470 Mich at 642 citing *People v Anderson*, 398 Mich 361, 367-368; 247 NW2d 857 (1976). Additionally, the trial court must advise the defendant of the charge, the maximum possible prison sentence for the offense, any mandatory minimum sentence, the risk involved in self-representation, and offer the opportunity to consult with a lawyer. MCR 6.005(D); *Williams*, 470 Mich at 642-643. A word for word or "litany approach" for waiver of the right to counsel is unnecessary. *Russell*, 471 Mich at 191. Rather, trial courts are only required to substantially comply with the waiver of counsel procedures set forth in *Anderson* and MCR 6.005(D) before granting a defendant's request for self-representation. *Russell*, 471 Mich at 191. Substantial compliance requires that the trial court discuss the constitutional and court rule requirements with the defendant and make a finding that the defendant understands, recognizes, and agrees to abide by the waiver procedures. *People v Adkins (After Remand)*, 452 Mich 702, 726-727; 551 NW2d 108 (1996). The presence of standby counsel does not satisfy the waiver and notice requirements. *People v Lane*, 453 Mich 132, 138; 551 NW2d 382 (1996).

On appeal, defendant contends that he did not unequivocally waive his right to counsel, but rather, acquiesced to the suggestion made by trial counsel. We disagree. Our review of the record reveals that the trial court substantially complied with the requirements of *Anderson* and MCR 6.005. Although defendant initially stated that he felt that he had no choice but to represent himself because of his concerns regarding defense counsel, the trial court made an express finding that defendant was raising the issue as a matter of strategy to raise this issue on appeal. More importantly, later during a break in the proceedings, defendant affirmatively responded that he wanted to represent himself, that he fully understood the risks involved with self-representation, and that he understood the maximum penalty in this case and the impact of being a second habitual offender. Therefore, this challenge is without merit.

Next, defendant asserts that he was deprived of the right to a public trial where there was no accommodation for public access during jury selection. We disagree. Defendant did not object to the trial court's action. The right to a public trial may be waived by the defendant's failure to assert the right. *Singer v United States*, 380 US 24, 35; 85 S Ct 783; 13 L Ed 2d 630 (1965); *Levine v United States*, 362 US 610, 619; 80 S Ct 1038; 4 L Ed 2d 989 (1960). The Sixth Amendment right to a public trial is not violated when a defendant fails to timely object such that other alternatives can be considered, the reason for the temporary closure is innocent, and the length of the closure is minimal. *People v Bails*, 163 Mich App 209, 211; 413 NW2d 709 (1987). In the present case, it is unclear if the trial court ordered the courtroom "closed."

Rather, before the jury venire was brought into the courtroom, the trial court stated that the courtroom should be “cleared.” Assuming without deciding that the courtroom was closed, defendant failed to object such that other accommodations could be made, the reason for the temporary closure was to allow the jury panel into the courtroom, and the length of the closure was short in duration. Therefore, defendant waived review of this issue and, in any event, the Sixth Amendment right to a public trial was not violated. *Singer*, 380 US at 35; *Levine*, 362 US at 619; *Bails*, 163 Mich App at 211.

Lastly, defendant contends that venue was improper for counts eight through eleven of the information because the meetings, restaurants, and banks addressing those counts were all located in Oakland County. We disagree. “Whenever a felony consists or is the culmination of 2 or more acts done in the perpetration of, said felony may be prosecuted in any county in which any 1 of said acts was committed.” MCL 762.8. When applying MCL 762.8, the location of the commission of an act is not limited to the place of the defendant’s physical presence. *People v Fisher*, 220 Mich App 133, 151-152; 559 NW2d 318 (1996). When an act has effects elsewhere that are essential to the commission of the offense, the offense is effectively committed in the location where it has its effects. *Id.* In the present case, the properties at issue were located in Wayne County and recorded in that jurisdiction. Therefore, the prosecution was proper in Wayne County.

Affirmed.

/s/ David H. Sawyer  
/s/ Jane E. Markey  
/s/ Karen M. Fort Hood